

Subpart A—General Provisions

§ 1773.1 General.

(a) This part implements those standard provisions of the security instrument utilized by the Rural Utilities Service (RUS) for both electric and telecommunications borrowers and by the Rural Telephone Bank (RTB) for its telecommunications borrowers. The provisions require borrowers to prepare and furnish to RUS, at least once during each 12-month period, a full and complete report of its financial condition, operations, and cash flows, in form and substance satisfactory to RUS, audited and certified by an independent certified public accountant (CPA), satisfactory to RUS, and accompanied by a report of such audit, in form and substance satisfactory to RUS.

(b) This part 1773 applies to both RUS and RTB borrowers. For the purposes of RTB borrowers, as used in this part 1773, *RUS* means *RTB* and *Administrator* means *Governor* unless the text indicates otherwise.

(c) This complies with the 1994 revision of Government Auditing Standards, issued by the Comptroller General of the United States, United States General Accounting Office, including amendments dated May 13, 1999, and July 30, 1999.

(d) An auditor's report, report on compliance and on internal control over financial reporting, and management letter are required to meet the reporting provisions of the RUS security instrument.

(1) The auditor's report must state that the audit was conducted in accordance with generally accepted government auditing standards (GAGAS).

(2) The management letter must state that the audit was conducted in accordance with this part.

(3) A report of the audit, in form and substance satisfactory to RUS, cannot be issued unless and until an audit has been performed in accordance with GAGAS and this part.

(4) A borrower is in violation of provisions of its security instrument with RUS if the borrower fails to provide an audit performed in compliance with GAGAS and this part. RUS security instruments normally provide for notice

and an opportunity to cure such violations before RUS can exercise certain remedies.

(5) A report prepared in connection with a review or compilation of financial statements, as defined in Statement of Standards for Accounting and Review Services No. 1, Compilation and Review of Financial Statements, does not satisfy the requirements of the RUS security instrument.

(6) A report, as described in Statement on Auditing Standards (SAS) No. 62, entitled "Special Reports", or in SAS No. 75, entitled "Engagements to Apply Agreed-upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement", does not satisfy the RUS loan security instrument requirements.

(7) An annual report containing audited financial statements does not satisfy the RUS security instrument requirements.

(e) This part further implements those provisions of the standard RUS security instrument by setting forth the criteria for CPAs to be deemed satisfactory to RUS and the audit procedures and documentation standards that must be performed before a report of the audit satisfactory to RUS can be prepared and issued.

[56 FR 63360, Dec. 3, 1991, as amended at 61 FR 107, Jan. 3, 1996; 66 FR 27835, May 21, 2001]

§ 1773.2 Definitions.

As used in this part:

AA-PARA means Assistant Administrator, Program Accounting and Regulatory Analysis.

Administrator means the Administrator of RUS and, as provided in § 1773.2 (b), *Governor*.

AICPA means the American Institute of Certified Public Accountants.

Audit means an examination of financial statements by an independent CPA for the purpose of expressing an opinion on the fairness with which those statements present financial position, results of operations, and changes in cash flows in conformity with generally accepted accounting principles (GAAP) and for determining whether the borrower has complied with applicable laws, regulations, and contracts for those transactions and events reflected in the financial statements.

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Borrower means an entity that has an outstanding RUS, RTB, or FFB loan or loan guarantee, or that has received a grant for electric, telecommunications, distance learning, or telemedicine purposes under the act.

CPA means certified public accountant. The terms *CPA* and *CPA firm* are used interchangeably.

FFB means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

Fraud has the same meaning prescribed in SAS No. 82 entitled "Consideration of Fraud in Financial Statements".

GAAP means generally accepted accounting principles.

GAGAS means generally accepted government auditing standards as set forth in Government Auditing Standards, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, issued by the Comptroller General of the United States.

GAO means the General Accounting Office.

Governor means the Governor of the RTB.

Illegal act has the meaning prescribed in SAS No. 54, entitled "Illegal Acts by Clients".

OIG means the Office of Inspector General, United States Department of Agriculture.

OMB means the Office of Management and Budget.

Regulatory asset means an asset resulting from an action of a regulator as prescribed in Statement of Financial Accounting Standards (SFAS) No. 71, entitled "Accounting for the Effects of Certain Types of Regulation".

Regulatory liability means a liability imposed on a regulated enterprise by an action of a regulator as prescribed in SFAS No. 71, entitled "Accounting for the Effects of Certain Types of Regulation".

Related party has the meaning prescribed in SFAS No. 57, entitled "Related Party Disclosures".

Related party transaction has the meaning prescribed in SFAS No. 57, entitled "Related Party Disclosures".

Reportable condition has the meaning prescribed in SAS No. 60, entitled

"Communication of Internal Control Structure Related Matters Noted in an Audit".

RTB means the Rural Telephone Bank.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telecommunications programs. See 7 CFR 1700.1.

RUS Bulletin 1773-1, Policy on Audits of RUS Borrowers, is a publication prepared by RUS that contains the RUS regulation 7 CFR part 1773 and exhibits of sample audit reports, financial statements, and a management letter used in preparing audit of RUS borrowers. This bulletin is available from USDA, Rural Utilities Service, Program Development and Regulatory Analysis, 1400 Independence Ave., SW., Stop 1522, Washington, DC 20250, or available on the internet at <http://www.usda.gov/rus/>.

SAS means Statement on Auditing Standards as prescribed by the AICPA.

SEC Practice Section means the Securities and Exchange Commission Practice Section of the AICPA.

SFAS means Statements of Financial Accounting Standards as prescribed by the Financial Accounting Standards Board.

State means any state or territory of the United States, or the District of Columbia.

Uniform System of Accounts means, for telecommunications borrowers, the Uniform System of Accounts for Telecommunications Companies, prescribed by the Federal Communications Commission and published at 47 CFR Part 32, as supplemented by RUS pursuant to 7 CFR Part 1770, Accounting Requirements for RUS Telephone Borrowers, subpart B, Uniform System of Accounts, and for electric borrowers,

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as contained in 7 CFR Part 1767, Accounting Requirements for RUS Electric Borrowers, subpart B, Uniform System of Accounts.

[56 FR 63360, Dec. 3, 1991, as amended at 59 FR 66440, Dec. 27, 1994; 60 FR 2874, Jan. 12, 1995; 63 FR 38722, July 17, 1998; 66 FR 27835, May 21, 2001]

Subpart B—RUS Audit Requirements

§ 1773.3 Annual audit.

(a) Each borrower must have its financial statements audited annually by a CPA selected by the borrower and approved by RUS as set forth in § 1773.4.

(b) Each borrower must establish an annual as of audit date within twelve months of the date of receipt of the first advance of funds from grants and insured and guaranteed loans approved by RUS and RTB and must prepare financial statements as of the date established.

(c) Until all loans made or guaranteed by RUS have been repaid, the borrower must furnish three copies of the auditor's report, report on compliance and on internal control over financial reporting, and management letter to RUS within 120 days of the as of audit date.

(d) A borrower that qualifies as a unit of state or local government or Indian tribe as such terms are defined in the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*), the Single Audit Act Amendments of 1996 (31 U.S.C. 7505 *et seq.*) and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (copy available from the Executive Office of the President, Publication Services, 725 17th St., NW., Suite 2200, Washington, DC 20502; 202-395-7332), must comply with this part as follows:

(1) A borrower that expends \$300,000 or more in a year in Federal awards must have an audit performed and submit an auditor's report meeting the requirements of the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996.

(2) A borrower that expends less than \$300,000 in Federal awards during the year must have an audit performed in accordance with the requirements of this part.

(3) A borrower must notify RUS, in writing, within 30 days of the as of audit date, of the total Federal awards expended during the year and must state whether it will have an audit performed in accordance with the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996, or this part.

(i) A borrower that elects to comply with this part must select a CPA that meets the qualifications set forth in § 1773.5.

(ii) If an audit is performed in accordance with the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996, an auditor's report that meets the requirements of the Single Audit Act of 1984, and the Single Audit Act Amendments of 1996, will be sufficient to satisfy that borrower's obligations under this part.

(e) OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations does not apply to audits of RUS electric and telecommunications cooperatives and commercial telecommunications borrowers.

[56 FR 63360, Dec. 3, 1991, as amended at 59 FR 659, Jan. 6, 1994; 63 FR 38722, July 17, 1998; 66 FR 27835, May 21, 2001]

§ 1773.4 Borrower responsibilities.

(a) *Selection of a qualified CPA.* The borrower's board of directors is responsible for the selection of a qualified CPA that meets the requirements set forth in § 1773.5. When selecting a CPA, the borrower should consider, among other matters:

(1) The qualifications of CPAs available to do the work;

(2) The CPA's experience in performing audits of utilities; and

(3) The CPA's ability to complete the audit and submit the reports and management letter within 90 days of the as of audit date.

(b) *Board approval of selection.* The board's approval of a CPA must be recorded by a board resolution that states:

(1) The CPA meets RUS's qualifications to perform an audit; and

(2) The borrower and CPA will enter into an audit agreement in accordance with § 1773.6.

(c) *Notification of selection.* When the initial selection or subsequent change